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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/048,202   | 04/22/2002  | Peter De Block       | 1989                | 6459             |
| 7590   | 06/28/2004  |                      | EXAMINER            |                  |
| Striker Striker & Stenby<br>103 East Neck Road<br>Huntington, NY 11743 |             |                      | GRAHAM, GARY K      |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1744                |                  |

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

*There*

|                              |                 |                 |
|------------------------------|-----------------|-----------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)    |
|                              | 10/048,202      | DE BLOCK ET AL. |
|                              | Examiner        | Art Unit        |
|                              | Gary K Graham   | 1744            |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. § 1.133.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 21-40 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 01282001, 04222002.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## DETAILED ACTION

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Applicant's preliminary amendment of 22 April 2002 cancelled all claims. Therefore, newly submitted claims should begin with the number 21. Accordingly, misnumbered claims 1-20 have been renumbered 21-40.

### *Specification*

The disclosure is objected to because of the following informalities: In the specification, reference to the claims appears improper (for example, see page 1, lines 5 and 19 as numbered). The specification should not look to the claims to define the invention.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 21, line 9, the “cross section” should be identified by where the cross section is being taken. In particular, it should be identified as a ---transverse--- cross section since it is only for such cross section that the legs diverge. In line 11, it appears “an” should be ---the--- since the attach surface has already been set forth in line 7.

In claim 22, line 2, there is no antecedent basis for “the wiper blade part”.

In claim 32, line 2, there is no antecedent basis for “the vicinity” or for “the wall”.

In claim 33, line 2, there is no antecedent basis for “the glued attachment”.

In claim 36, line 2, there is no antecedent basis for “the projection of the flute”.

In claim 37, line 3, there is no antecedent basis for “the projection of the flute”.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21, 23, 24, 25, 26, 28, 30, 31, 35, 38 and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by Egner-Walter et al (US patent application publication 2003/0014828).

The patent to Egner-Walter discloses the invention as is claimed (fig.6), including a deflection strip (11c) with diverging legs (not numbered but shown), when viewed in cross section, that are joined by a common base. The legs engage an upper band surface of the elastic support element (3,4) that engages the rubber wiper strip (2). The outside of the legs have a surface that is considered to be a fluted attack surface, at least as far as defined.

With respect to claim 24, 25 and 28, Egner-Walter discloses (paragraph 44) that the ends of the strip can be laterally closed in the same manner as edge (19), which extends longitudinally along the blade.

With respect to claim 26, since the edge (19) is rounded around the support element, there will be an acute angle defined between the outside of the wall, at least at one point, and the support element.

With respect to claim 30, note that gluing is not required.

With respect to claims 38 and 39, note that no hardness difference is required by the claims. A maximum of either 40 or 20 percent greater hardness for the deflection strip over the wiper strip is claimed. A zero percent greater hardness for the deflection strip over the wiper strip would meet the claim. Since Egner-Walter does not discuss a hardness difference between the deflection strip and the wiper strip, none is assumed. Therefore, it appears Egner-Walter would meet the zero percent greater hardness for the deflection strip over the wiper strip.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 29 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egner-Walter et al (US patent application publication 2003/0014828) in view of Merkel et al (German patent 19736368).

The patent to Egner-Walter discloses all of the above recited subject matter with the exception of the deflection strip being glued to the support element.

The patent to Merkel discloses coupling of a deflection strip (32) to a support element (12) via a glued connection (col. 2, lines 20-28).

It would have been obvious to one of skill in the art to couple the deflection strip of Egner-Walter to the support element by gluing, as clearly suggested by Merkel, to increase the security of the connection between the deflection strip and the support element. It appears such gluing could be instead of the claw-like projections or in addition thereto to provide increased connection strength. Further, use of glue or adhesives as a sole connector or in addition to mechanical connectors is notoriously well known and could readily be employed in the Egner-Walter wiper device.

*Allowable Subject Matter*

Claims 22, 27, 32, 34, 36, 37 and 40 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary K Graham  
Primary Examiner  
Art Unit 1744

GKG  
23 June 2004